IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR.

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:: JUDGMENT ::

Rajasthan State Road Transport Corporation **Vs.** **Smt. Pushpa & Ors.**

S.B. CIVIL MISC. APPEAL NO.419/1994.

Against the judgment and award 29.01.1994 made by the Motor Accidents Claims Tribunal, Pali in Claim Case No.110/1988.

Date of Judgment :: 30th November 2006.

PRESENT

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. B.S. Bhati, for the appellant.
Mr. S.K. Sankhla, for the respondents.

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BY THE COURT:

This appeal under Section 173 of the Motor Vehicles Act, 1988 has been preferred by the owner of the vehicle involved in the accident against the award dated 29.01.1994 made by the Motor Accidents Claims Tribunal, Pali in Claim Case No.110/1988 questioning the finding on responsibility of their driver in causing the accident and quantification of compensation awarded by the Tribunal in the

sum of Rs.2,12,696 to the claimant No.1 because of accidental death of her husband Chela Ram who was about 44 years in age and was working as a Mechanic Gr.I with the appellant Rajasthan State Road Transport Corporation (RSRTC).

Brief facts relevant for determination of the questions involved in this case could be noticed thus: The claimants Smt. Pushpa, about 40 years in age, and Kamlesh, about 19 years in age, submitted the claim application against the driver and owner of the bus bearing registration No. RRB 4898 claiming compensation on account of accidental death of Chela Ram, husband of the claimant No.1 and father of the claimant No.2. In relation to the accident, the claimants averred that at about 9:00 a.m. on 25.03.1988 when the victim Chela Ram was travelling in the aforesaid bus RRB 4898 from Falna to Jodhpur, at Digai bus stand, the bus in question hit a jeep bearing registration No. RST 4557 from behind; the jeep was pushed ahead and came to halt after hitting against a Babool tree; after hiting the aforesaid jeep, the bus collided with an oncoming truck bearing registration No. RJE 3236; the accident caused injuries to the occupants of the respective vehicles; and Chela Ram, travelling in the bus sustained several injuries and succumbed on the spot. The claimants further averred that after investigation, the police found fault

in the driver, non-applicant No.1 for causing accident by driving the bus negligently at a high speed and filed challan against him for offences under Sections 279, 337, 338 and 304-A IPC. For quantification of compensation, the claimants alleged that the deceased was working at Falna Depot of RSRTC as a Mechanic earning Rs.1,770/- monthly salary apart from travelling allowance; that he was an efficient mechanic and was maintaining good health at 44 years of age; that he was likely to get promotions and his income was likely to increase to about Rs.4,000/- per month by the time of his retirement and thereafter also he was to establish his workshop and was likely to earn about Rs.4000/--5000/- per month. With reference to the earning prospects of the deceased, the claimants made a claim in the sum of Rs. 12,07,289/- towards pecuniary loss. The claimants further averred in paragraph 11 (B) of the claim application that for sudden demise of Chela Ram his wife was deprived of the pleasures of matrimonial life and would be required to spend her life as a widow and such loss cannot be computed in terms of money but towards this loss they were claiming Rs.25,000/-. In paragraph 11 (C) of the claim application, the claimants further averred that because of sudden demise of Chela Ram, they were deprived of love and affection and such loss could also not be computed in monetary terms and they were

claiming Rs. 20,000/- on that count. The claimants further claimed Rs.30,000/- with the averments that they were facing serious difficulties for livelihood and the claimant No.2 was required to quit his studies and the deceased also suffered agony because of the injuries. In this manner, the claimants made a claim in the sum of Rs. 12,82,289/- and claimed first mentioned compensation in the sum of Rs.15,000/- under Section 92-A of the Motor Vehicles Act, 1939.

In reply to the claim application on behalf of RSRTC, the owner of the bus in question while stating denial of other claim averments, it was submitted that according to their knowledge the victim was travelling illegally without ticket and, therefore, he was at fault; that the claim was liable to be rejected as the persons related with the aforesaid jeep and truck were not impleaded as parties; that Chela Ram died natural death and not due to accident; that he was travelling without getting his leave sanctioned and without ticket. The non-applicant RSRTC denied the averments regarding income and loss as stated in paragraph 11 of the claim application with the submissions that the claimants have made twisted averments. It was further stated in the reply in relation to the claim for non-pecuniary loss that the claimant No.1 had already enjoyed marital life; that in this age pleasures of marital life were not required and the claim of Rs.25,000/- was

highly excessive. It was further averred that so far love and affection were concerned, the deceased had already given out so much that nothing was left and the averments by the claimants were only in order to recover claim against the answering non-applicant. It was also alleged that no cause of action accrued against the non-applicant; that the claim was suffering from misjoinder of parties; and it was not clear if the claimants were the legal representatives of the deceased. It is relevant to notice that though having taken vexatious and unnecessary pleadings, the non-applicant, owner of the vehicle, failed to come out with any specific averment concerning the accident in question and responsibility thereto.

The non-applicant No.1, driver of the bus, submitted a separate reply and alleged that he was taking the bus in normal speed and was not driving negligently or without caution; that he was about 10-15 feet behind the jeep and suddenly the jeep driver halted the jeep on the road without any indication; that he applied the brakes but the bus did not stop and in order to save the jeep and the persons alighting the jeep, he took a side turn and thereupon corner of the bus touched the jeep that went ahead and for this reason the oncoming truck hit against the bus causing the accident and he was not at all responsible for the accident. The quantum of compensation claimed was also put to

contention, inter alia, with the averments that the claimant No.2 has obtained compassionate appointment in RSRTC on account of death of Chela Ram. On the pleadings of the parties, the Tribunal framed the following issues for determination of the questions involved in the case:-

> "(1)आया दिनांक 25-3-88 को प्रात: करीब 9 बजे डिगाई बस-स्टेन्ड के पास आम सड़क पर अप्रार्थी संख्या 1 मोहनसिंह ने अप्रार्थी सं. 2 राजस्थान राज्य पथ परिवहन निगम की बस आर आर बी 4898 को बहुत ही तेज, लापरवाही व बेएहतीयाती से चलाकर बस-स्टेन्ड पर खडी जीप नं० आर एस टी 4557 के पीछे से टक्कर मारी। तत्पश्चात सामने आते ट्रक आर जे ई 3236 के टक्कर मारी जिसके फलस्वरूप जीप आर एस टी 4557 व ट्रक आर जे ई 3236 क्षतिग्रस्त हुये और जीप में बैठी सवारियों व ट्रक चालक व बस में बैठी सवारियों के काफी चोटे आई और बस में सवार मृतक चेलाराम के काफी चोटे लगने से उसकी मृत्यु घटनास्थल पर हुई । प्रार्थी ।
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> (2)आया मृतक चैलाराम मैकेनिकल के पद पर राजस्थान राज्य पथ परिवहन निगम फालना डिपो पर तैनात था और उसे 1700) रूपये मासिक वेतन मिलता था ?
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> प्रार्थी ।
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> (3) आया दुर्घटना के समय चैलाराम की आयु 44 वर्ष थी और उसके 30 वर्ष और जीवित रहने की संभावना थी और वह रिटायरमेन्ट तक उसकी पदोन्नित से 84000) रूपये प्राप्त करता और प्राप्त करता और सेवानिवृति के पश्चात उसकी औसतन मासिक आय 3000) रूपये होती और वह 576000) की आय अर्जित करता?
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> प्रार्थी ।
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> (4) आया मृतक चैलाराम की बेवा प्रार्थी संख्या 1 व उसका पुत्र प्रार्थी संख्या 2 अप्रार्थीगण से मृतक चैलाराम की मृत्यु की क्षतिपूर्ति की राशि 1282289) प्राप्त करने के अधिकारी है ?
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> प्रार्थी ।
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> (5) अनुतोष ?"

In evidence, the wife of the deceased, claimant No.1 Pushpa was examined as AW-1; and the Office Superintendent of RSRTC, Badri Singh as AW-2 whereas the bus driver, Mohan Singh, was examined as NAW-1. The claimants also produced documentary evidence including the site inspection report prepared by the Investigating Agency (Ex.4)and last pay certificate of the deceased (Ex.1).

With reference to the statement of bus driver NAW-1 and the site inspection report Ex.4, the learned Judge of the Tribunal decided issue No.1 in favour of the claimants and against the non-applicants with the finding that the accident was caused by rash and negligent driving of the bus that hit the jeep from behind and then the oncoming truck. In issue No.2, the learned Judge found that the deceased was earning Rs.1,460/- as basic salary and Rs.263/- dearness allowance and accepted his income at Rs.1,723/- per month. On this basis, the learned Judge decided in issues Nos. 3 and 4 the loss of dependency at Rs.1,147/- per month and with application of a multiplier of 14 with reference to number of years of service left, assessed pecuniary loss in the sum of Rs.1,92,696/-. The learned Judge further allowed Rs.20,000/- to the wife of the deceased towards loss of consortium. However, in relation to the son of the deceased, claimant No.2, the learned Judge observed that he was 19 years of

age at the time of accident and he had been accorded compassionate appointment and, therefore, he was not entitled for any compensation. Accordingly, the claimant No.1 Smt.Pushpa has been awarded compensation in the sum of Rs.2,12,696/- together with interest @ 12% per annum from the date of filing of the claim application, after adjustment of the amount of compensation paid under No Fault Liability.

The appellant RSRTC has assailed the award aforesaid with the submissions that from the testimony of Mohan Singh, NAW-1, it was amply established that the drivers of the said jeep and the truck were responsible for causing the accident in which Chela Ram sustained injuries and died on the spot and only the persons related with the said jeep and the truck were liable to pay compensation, if any, and not the appellant; that the Tribunal has proceeded only on surmises and conjectures and the finding on the liability of the bus driver was perverse and unsustainable; that the question of contributory negligence ought also to have been considered as there was a contribution of truck driver and the jeep driver to the accident; that the amount awarded towards compensation is excessive; and that the fact of the son of the deceased having been accorded compassionate appointment has not duly been considered while quantifying compensation.

Having given a thoughtful consideration to the submissions made on behalf of the appellant and having examined the entire record, this Court is clearly of opinion that this appeal remains absolutely bereft of substance.

So far the responsibility towards the accident is concerned, it lies exclusively with the non-applicants. The bus driver, Mohan Singh NAW-1 has stated that the jeep was suddenly brought to a halt and when the jeep driver put the brakes he was 10-15 feet behind and that his vehicle was in the speed of about 15-20 (obviously he was referring to the speed in kilometres per hour). The driver has stated that he took a sudden turn towards right in order to save the jeep and a corner of the bus brushed against the jeep; that a truck was coming from the opposite direction in a brisk speed that hit the bus causing the accident. According to the bus driver, if the jeep would not have been brought to sudden halt and if the truck driver would have immediately taken a turn, the accident would not have occurred. The statement is not trustworthy. If his vehicle was about 10-15 feet behind the jeep and was doing only about 10-15 kilometres per hour then, even if the jeep was brought to a sudden halt on the road, there was no reason that the bus driver could not have brought the bus to a halt before touching the jeep. Then, the site plan Ex.4 shows that the bus hit the jeep forcefully and

the jeep went ahead crashing into a tree on the left-hand side of the road. After hitting the jeep, the bus took a sharper turn towards the right to such an extent that it crossed the middle line of the road and intruded into the other lane and for this reason collided with the oncoming truck.

The situation at site makes it apparent that the bus was being driven in a brisk speed and in such an uncontrolled manner that it could not be stopped before or even after hitting the jeep and was required to be taken to its right to the other lane. A fact stated in the reply of the bus driver has consciously been omitted in his statement, but cannot be ignored, that he applied the brakes but the bus did not stop and then in order to avoid the jeep and its passengers the bus was put to a sharp turn. Such averments on the part of the bus driver indicate that either the bus was being driven rashly or that its brakes were not functioning properly. In either event, it were the omission of care on the part of the non-applicants that resulted in accident causing fatal injuries to Chela Ram. The findings by the Tribunal on issue No.1 remain proper and valid and call for no interference.

Coming to the question of quantum of compensation, having examined the award, this Court is satisfied that the amount awarded by the Tribunal is not excessive than that of just compensation admissible in this

case. The Tribunal has quantified compensation with application of multiplier of 14 only whereas the fact remains that the deceased was less than 44 years of age at the time of accident and in the circumstances of the case, multiplier of 15 could also have been considered. The Tribunal has taken the income of the deceased at a static figure of Rs.1,723/- per month being his last income; though having regard to his age at 44 years and in view of his being in a settled job, a reasonable component towards future prospects could also have been provided for. Assessment of pecuniary loss at Rs.1,92,696/- is rather on the lower side from all standards. The Tribunal has of course allowed Rs.20,000/- towards non-pecuniary loss to the wife of the deceased and that appears a bit higher but in view of the lower side assessment made on pecuniary loss, the ultimate award nevertheless remains moderate and is not excessive.

So far the claimant No.2, the son of deceased is concerned, a fact has been stated about his having been accorded compassionate appointment by RSRTC in place of his deceased father. However, in the circumstances of the case, there does not appear any reason to provide for any reduction in the amount of compensation on that count. The claimant No.2 was 19 years in age at the time of accidental death of his father and it has been pointed out by his mother,

Smt. Pushpa AW-1 that he was then studying in 9th Standard but two months after the incident had to give up the studies. By way of compassionate appointment, the son of the deceased has been appointed as a peon and obviously such job on a Class IV post has been accepted by him under the force of circumstances compromising against his own future prospects. Then, the salary income is earned by him by putting his own labour into the job. This Court is clearly of opinion that in this case no component towards the alleged benefit derived by the claimants on account of compassionate appointment calls for adjustment in the amount of pecuniary loss. The loss that has occasioned to the claimants including the claimant No.2 upon giving up his studies while being in 9th Standard is rather higher than whatever little component of benefit could be attributed to the compassionate appointment. Moreover, such little component of benefit is effectively set off when it is noticed that the Tribunal has neither provided for future prospects of the deceased nor applied reasonable multiplier of 15. In the present case the Tribunal has of course erred in depriving the claimant No.2, son of the deceased, of any amount of compensation on the baseless consideration that he was major at the time of demise of the victim and that he had been granted compassionate appointment. This Court is clearly of opinion that on such ground the son of the

deceased could not have been deprived altogether of reasonable amount of compensation.

In the aforesaid view of the matter, the impugned award on its quantification of compensation does not call for any interference. However, in view of the fact that payment of 50% of the award amount was ordered to be stayed in this appeal on 26.10.1994 and the stay order was confirmed on 24.11.1997, it appears appropriate to issue necessary directions for allowing compensation equally to both the claimants and to modify the award in that regard.

As a result of the discussion aforesaid, the appeal deserves to be dismissed and the award deserves to be modified inter se the claimants. However, before concluding, a comment on the conduct of the appellant in this case is necessary. The pleadings taken by the parties have been noticed hereinbefore. It is rather shocking that a State Road Transport Corporation like the appellant choose to take insensitive pleadings in reply to the claim averments towards loss of consortium and loss of love and affection. It is not considered desirable to reproduce such pleadings in this judgment but the response of the non-applicant to paragraphs 11 (B) and 11 (C) of the claim application as made in paragraphs 9 (B) and 9 (C) of its reply sounds vexatious. It could never be countenanced that in a reply to the claim

application in a fatal accident case, the non-applicant could dare say for the widow that she had already enjoyed the matrimonial pleasures and nothing was required of matrimonial pleasures in her age; and for the son that the deceased had already given so much of love and affection that nothing was left. Such pleadings towards widow who has lost her husband and towards son who has lost his father in a vehicular accident sound extremely irresponsible and insensitive. Such averments are not less than a slur on the entire humanity and deserve to be deprecated. This Court taking serious exception to such averments, posed a question to the learned counsel Mr. B.S.Bhati appearing for the appellant-Corporation about the propriety of such pleadings and the action taken or proposed to be taken against the persons responsible thereto. In response, the appellant has made submissions supported by affidavit of their Legal Assistant that the person responsible for taking such pleadings was an Administrative Officer of the Corporation who had since retired and was suffering from the ailments of diabetes and heart problem and he was neither able to move nor in a position to give explanation. It has also been pointed out that the said Officer-in-charge was posted with the Corporation on deputation by the Government and he is getting pension from the State Government. However, the appellant has tendered

apology and has expressed regrets over such pleadings; and has put assurance that the appellant-Corporation would be more conscious in future in taking responsible pleadings. It has, inter alia, been stated,-

> "5. That with great respect it is also most respectfully submitted that under such situation the appellant corporation tender its unconditional apology before this Hon'ble Court of such type of pleadings submitted by Shri Nathu Lal Sharma son of Shri Ram Sahay Sharma, the then Administrative Officer cum Officer-in-charge in the present matter and with utmost regard it is further respectfully submitted that the appellant corporation would be more conscious in future for submitting the proper, responsible and comprehensive pleadings in accordance with the procedure and law.
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> 6. That with great respect and due apology it is most respectfully submitted that inconvenience caused to this Hon'ble Court is highly regretted."

For the cause shown in the submissions made on behalf of the appellant and for regrets and assurance stated before this Court, no further action is taken in this matter except imposing token costs upon the appellant but with specific warning for guarding against irresponsible pleadings before the Courts of law. In the circumstances of this case, only token costs in the amount of Rs.1,000/- is imposed on

the appellant-Corporation to be deposited with the State Legal Services Authority.

In the result, this appeal is dismissed with costs of Rs.1,000/- to be deposited by the appellant with the State Legal Services Authority within 30 days from today.

The remaining amount payable under the award shall be deposited by the appellant Corporation under the impugned award within 30 days from today and it shall be required of the Tribunal to apportion the award amount equally between the two claimants and to issue necessary orders for disbursement in accordance therewith.

(DINESH MAHESHWARI), J.

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